

November 5, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 2002

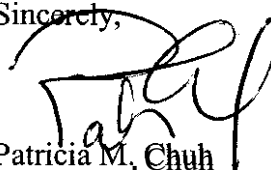
**Re: In the Matter of Amendment of Section 73.202(b)
Table of Allotments, FM Broadcast Stations
(Smiley, Texas)
MB Docket No. 02-248; RM-10537
Reply Comments**

Dear Ms. Dortch:

LBR Enterprises, Inc. (FRN: 0003-7790-22), the licensee of KZRC(FM), Markham, Texas (FCC Facility ID No. 87439), by its attorneys and pursuant to the Notice of Proposed Rule Making, DA 02-2061, MB Docket No. 02-248, RM-10537, released August 30, 2002, hereby submits an original and four (4) copies of its reply comments in the above-referenced rulemaking proceeding.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,



Patricia M. Chuh

Enclosure

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Before the
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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-248
Table of Allotments,)	RM-10537
FM Broadcast Stations,)	
<u>(Smiley, Texas)</u>)	

To: Chief, Audio Division

REPLY COMMENTS

LBR Enterprises, Inc. ("LBR"), the licensee of KZRC(FM), Markham, Texas (FCC Facility ID No. 87439), by its attorneys and pursuant to the Notice of Proposed Rule Making, DA 02-2061, MB Docket No. 02-248, RM-10537, released August 30, 2002 ("NPRM"), hereby submits its reply comments in the above-referenced rule making proceeding.¹ Because the allotment plan submitted by New Ulm Broadcasting Company ("**NUBC**") in its counterproposal, as more fully described below, will result in a more preferential arrangement of allotments, LBR supports the adoption of NUBC's allotment plan.² In support thereof, the following is respectfully submitted:

Introduction

On August 30, 2002, the Commission released the NPRM seeking comments on the proposed allotment of Channel 280A to Smiley, Texas. In response to the NPRM, various

¹ The NPRM established November 5, 2002 as the deadline for filing reply comments. Accordingly, the instant Reply Comments is timely filed.

² See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982); Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989).

parties filed comments and counterproposals. On October 21, 2002, LBR filed a counterproposal proposing: (a) the substitution of Channel 280A for Channel 223A at Yoakum, Texas and the modification of KYKM(FM), Yoakum, Texas (FCC Facility ID No. 67287) to specify operation on Channel 280A at Yoakum, Texas; and (b) the substitution of Channel 223C3 for Channel 223A at Markham, Texas and the modification of KZRC(FM), Markham, Texas (FCC Facility ID No. 87439) to specify operation on Channel 223C3 at Markham, Texas (“LBR Counterproposal”). Smiley Broadcast Interest filed comments with its expression of interest in the allotment of Channel 280A to Smiley, Texas on October 21, 2002.³

Also on October 21, 2002, NUBC, the licensee of KNRG(FM), New Ulm, Texas (FCC Facility ID No. 15113), filed its comments and counterproposal, which was amended by an Errata filed on October 23, 2002 and a Second Errata filed on October 31, 2002 (“NUBC Counterproposal”), proposing: (1) the reallocation of Channel 222A from New Ulm, Texas to Schulenburg, Texas, the substitution of Channel 222C3 for Channel 223A at Schulenburg, Texas, and the modification of KNRG(FM), New Ulm, Texas (FCC Facility ID No. 15113) to specify operate on Channel 222C3 at Schulenburg, Texas; (2) the allotment of Channel 283A at New Ulm, Texas as a replacement channel⁴; (3) the substitution of Channel 280A for Channel 223A at Yoakum, Texas and the modification of KYKM(FM), Yoakum, Texas (FCC Facility ID No. 67287) to specify operation on Channel 280A at Yoakum, Texas; (4) the substitution of Channel 235C2 for Channel 284C2 at Ganado, Texas and the modification of KZAM(FM),

³ On September 18, 2002, Linda Crawford, the petitioning proponent of the NPRM, filed her expression of interest in the allotment of Channel 280A to Smiley, Texas.

⁴ NUBC certified its expression of interest in Channel 283A at New Ulm, Texas.

⁵ Lagrange Broadcasting Corporation, the licensee of KYKM(FM) consented to the proposed channel change by a letter dated October 17, 2002, a copy of which was submitted with NUBC’s Counterproposal.

Ganado, Texas (FCC Facility ID No. 27619) to specify operation on Channel 235C2 at Ganado, Texas⁶; (5) the substitution of Channel 291A for Channel 231C3 at Pt. Comfort, Texas and the modification of KAJI(FM), Pt. Comfort, Texas (FCC Facility ID No. 6022) to specify operation on Channel 291A at Pt. Comfort, Texas'; (6) the substitution of Channel 232A for Channel 222A at Victoria, Texas and the modification of KQVT(FM), Victoria, Texas to specify operation on Channel 232A at Victoria, Texas'; (7) the substitution of Channel 284C3 for Channel 236C1 at Victoria, Texas and the modification of KVIC(FM), Victoria, Texas (FCC Facility ID No. 28477) to specify operation on Channel 284C3 at Victoria, Texas⁹; (8) the substitution of Channel 222A for Channel 291A at Refugio, Texas and the modification of KTKY(FM), Refugio, Texas (FCC Facility ID No. 40798) to specify operation on Channel 222A at Refugio, Texas"; (9) the relocation of the transmitter site of KEMA(FM), Three Rivers, Texas (FCC Facility ID No. 31640) as specified in the pending FCC 301 modification application (FCC File No. BPH-20021021AAI)¹¹; and (10) the allotment of Channel 242A instead of Channel 232A at

⁶ Fort Bend Broadcasting Company, the licensee of KZAM(FM) consented to the proposed channel change by a letter dated October 17, 2002, a copy of which was submitted with NUBC's Counterproposal.

⁷ Fort Bend Broadcasting Company, the licensee of KAJI(FM) consented to the proposed channel change by a letter dated October 17, 2002, a copy of which was submitted with NUBC's Counterproposal.

⁸ Capstar TX Limited Partnership, the licensee of KQVT(FM) consented to the proposed channel change by a letter dated October 17, 2002, a copy of which was submitted with **NUBC's** Counterproposal.

⁹ KVIC(FM) is currently licensed for operation on Channel 236C3 at Victoria, Texas (FCC File No. BLH-20000501ACB) but Section 73.202(b), Table of Allotments, FM Broadcast Stations, was never amended to reflect change. NUBC certified its intention to reimburse the licensee of KVIC(FM) for its costs in implementing the proposed channel change.

¹⁰ NUBC certified its intention to reimburse the licensee of KTKY(FM) for its costs in implementing the proposed channel change.

¹¹ Roy E. Henderson, the licensee of KEMA(FM), confirmed his agreement to relocate the transmitter site for KEMA(FM) as specified in the pending FCC 301 modification application by a letter dated October 21, 2002.

either Flatonia, Texas (Docket 00-148) or Shiner, Texas (Docket 01-105)¹² (“NUBC Allotment Plan”).

Discussion

1. The adoption of NUBC’s Allotment Plan will result in a more preferential arrangement of allotments under the Commission’s FM allotment priorities.¹³ The allotment of Channel 222C3 at Schulenburg, Texas (and the modification of the facilities of KNRG(FM) accordingly) will result in the provision of a first full-time aural service of any kind to Schulenburg, Texas because the entire city of Schulenburg as well as a substantial contiguous area to the West is currently a “white area” with no aural service at all. See NUBC’s Counterproposal. Moreover, NUBC requests the allotment of Channel 283A at New Ulm, Texas as a fully equivalent replacement channel. As such, NUBC’s Allotment Plan will serve the Commission’s highest allotment priority. Accordingly, the Commission should adopt NUBC’s Allotment Plan.

2. LBR respectfully notes that on October 22, 2002, LBR filed a minor modification application (on FCC Form 301) seeking a one-step upgrade of KZRC(FM), Markham, Texas to specify operation on Channel 223C3 at Markham, Texas (FCC File No. BPH-20021022AAB) (“KZRC(FM) One-Step Application”).¹⁴ So long as the Commission does not allot Channel 280A to Smiley, Texas in this allotment proceeding, LBR’s KZRC(FM) One-Step Application

¹² There are pending disputes involving Channel 232A in both allotment proceedings. See discussion on pages 10-11 in NUBC’s Counterproposal.

¹³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC Rcd 29 88 (1982).

¹⁴ This application was accepted for filing by the Commission on October 28, 2002. See FCC Public Notice Report No. 25349, released October 28, 2002.

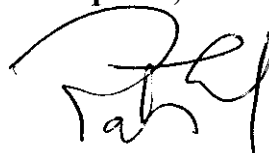
may be processed by the Commission with no conflict to any other proposed allotment in this proceeding.

WHEREFORE, for the reasons above, the Commission should adopt the allotment plan proposed by New Ulm Broadcasting Company by: (1) the reallocation of Channel 222A from New Ulm, Texas to Schulenburg, Texas, the substitution of Channel 222C3 for Channel 223A at Schulenburg, Texas, and the modification of KNRG(FM), New Ulm, Texas (FCC Facility ID No. 15113) to specify operation on Channel 222C3 at Schulenburg, Texas; (2) the allotment of Channel 283A at New Ulm, Texas as a replacement channel; (3) the substitution of Channel 280A for Channel 223A at Yoakum, Texas and the modification of KYKM(FM), Yoakum, Texas (FCC Facility ID No. 67287) to specify operation on Channel 280A at Yoakum, Texas; (4) the substitution of Channel 235C2 for Channel 284C2 at Ganado, Texas and the modification of KZAM(FM), Ganado, Texas (FCC Facility ID No. 27619) to specify operation on Channel 235C2 at Ganado, Texas; (5) the substitution of Channel 291A for Channel 231C3 at Pt. Comfort, Texas and the modification of KAJI(FM), Pt. Comfort, Texas (FCC Facility ID No. 6022) to specify operation on Channel 291A at Pt. Comfort, Texas; (6) the substitution of Channel 232A for Channel 222A at Victoria, Texas and the modification of KQVT(FM), Victoria, Texas to specify operation on Channel 232A at Victoria, Texas; (7) the substitution of Channel 284C3 for Channel 236C1 at Victoria, Texas and the modification of KVIC(FM), Victoria, Texas (FCC Facility ID No. 28477) to specify operation on Channel 284C3 at Victoria, Texas; (8) the substitution of Channel 222A for Channel 291A at Refugio, Texas and the modification of KTKY(FM), Refugio, Texas (FCC Facility ID No. 40798) to specify operation on Channel 222A at Refugio, Texas; (9) the relocation of the transmitter site of KEMA(FM), Three Rivers, Texas (FCC Facility ID No. 31640) as specified in the pending FCC 301

modification application (FCC File No. BPH-20021021AAI); and (10) the allotment of Channel 242A instead of Channel 232A at either Flatonia, Texas (Docket 00-148) or Shiner, Texas (Docket 01-105).

Respectfully submitted,

LBR Enterprises, Inc.



November 5, 2002

By: _____

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Patricia M. Chuh, **Esq.**

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CERTIFICATE OF SERVICE

I, Dina Etemadi, a secretary in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that true copies of the foregoing "Reply Comments" were sent this 5th day of November, 2002 by U.S. first class mail, postage prepaid, to the following:

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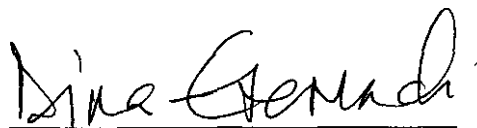
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